



State of Wisconsin  
Governor Scott Walker

**Department of Agriculture, Trade and Consumer Protection**

Ben Brancel, Secretary

**DATE:** April 30, 2014

**TO:** Board of Agriculture, Trade and Consumer Protection

**FROM:** Ben Brancel, Secretary *Ben Brancel*  
Daniel Smith, Administrator, Division of Agricultural Development *Daniel Smith*

**SUBJECT: ATCP 141- CHERRY MARKETING ORDER; Rulemaking Scope Statement**

**TO BE PRESENTED BY:** Daniel Smith and Staff

**REQUESTED ACTION:**

At the May 14, 2014 Board meeting, the Department of Agriculture, Trade and Consumer Protection (DATCP) will ask the DATCP Board to approve a "Statement of Scope" (copy attached) for proposed amendments to the current DATCP Cherry Marketing Order. The proposed amendments will alter the method for electing representatives to the Cherry Board to entirely at large representation and will reduce the number of representatives from 7 to 5 in order to assure fair representation for cherry producers. A scope statement spells out the general purpose and scope of a proposed rule. DATCP may not begin drafting a proposed rule (including a proposal to amend or repeal an existing rule) until the Governor approves a scope statement for the proposed rule and the DATCP Board approves the scope statement. In accordance with 2011 Wisconsin Act 21 (s.227.135(2), Stats.), the Governor approved this scope statement for permanent rule changes on April 3, 2014 thereby allowing DATCP to submit this scope statement for publication and to seek approval of the scope statement by the DATCP Board.

DATCP must publish a draft scope statement in the Wisconsin Administrative Register, and file a copy with the Department of Administration (DOA), at least 10 days before the Board approves the scope statement. DATCP filed the attached statement of scope with the Legislative Reference Bureau for publication in the May 1, 2014 issue of the Wisconsin Administrative Register. DATCP also filed a copy with DOA.

If the Board approves the scope statement, the Department will begin work to draft the permanent rule. Approval of a scope statement is just the first, preliminary step in a lengthy process for enacting permanent rules. The Board will have at least two further opportunities to review the proposed rule. The Board must approve a hearing draft rule before DATCP may hold public hearings on the rule proposal. The Board must also approve the final draft rule before DATCP may adopt the rule. The permanent rule will be effective when the final draft has been

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approved by the DATCP Board, approved by the Governor, completed the legislative review process and adopted by the Secretary.

# STATEMENT OF SCOPE

## Department of Agriculture, Trade and Consumer Protection (DATCP)

Rule No.: Ch. ATCP 141, Wis. Adm. Code (Existing)

Relating to: The Cherry Marketing Order

### 1. Description of the objective of the rule:

This proposed rule would eliminate the Cherry Board election districts so that all board members are elected at large and reduce the number of board members from 7 to 5 to improve representation of cherry producers and more effectively achieve the purposes of Ch. 96, Stats.

### 2. Description of existing policies relevant to the rule and of new policies proposed to be included in the rule and an analysis of policy alternatives; the history, background and justification for the proposed rule:

History and background. The Cherry Marketing Order that currently exists provides for two election districts with 3 board members representing each district and one board member elected at large. Over the years the number of cherry producers has decreased to 33 producers and the distribution of producers has become concentrated primarily in what was the northern of the 2 districts.

Proposed policies. At the request of the Cherry Marketing Board, DATCP will explore changing the manner of representation to all at large representatives and a reduction of the number of representatives from 7 to 5 in order to achieve more equitable and effective representation for cherry producers. Any amendment to the marketing order must be approved at a referendum of the growers.

Policy Alternatives. Leave the current rule as it is with the same board membership and election districts and thereby fail to achieve more effective and more equitable representation for cherry growers.

### 3. Statutory authority for the rule (including the statutory citation and language):

Sections 93.07 (1) and 96.15, Stats.

**93.07 Department duties.** It shall be the duty of the department:

(1) REGULATIONS. To make and enforce such regulations, not inconsistent with law, as it may deem necessary for the exercise and discharge of all the powers and duties of the department, and to adopt such measures and make such regulations as are necessary and proper for the enforcement by the state of chs. 93 to 100.

**96.15 Rules.** The secretary may, in consultation with the appropriate marketing board or council, issue such rules as necessary to facilitate the administration and enforcement of this chapter.

**4. Estimate of the amount of time that state employees will spend to develop the rule and of other resources necessary to develop the rule:**

DATCP estimates that it will use approximately 0.20 FTE staff to develop this rule. That includes time required for investigation and analysis, rule drafting, preparing related documents, coordinating advisory committee meetings, holding public hearings and communicating with affected persons and groups. DATCP will use existing staff to develop this rule.

**5. Description of all entities that may be impacted by the rule:**

This rule would affect cherry growers. The proposed rule would alter the manner of representation of cherry growers on the Cherry Marketing Board to achieve more effective and equitable representation. Any amendment to the marketing order including a proposal to alter the method of representation must be approved at referendum by a majority of all Wisconsin cherry growers.

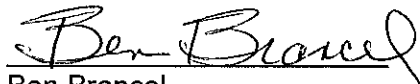
**6. Summary and preliminary comparison of any existing or proposed federal regulation that is intended to address the activities to be regulated by the rule:**

There is a federal cherry marketing order program. The federal cherry marketing order program serves to promote orderly and efficient marketing of cherries in the United States. The state and federal programs are complementary and the state program works in close coordination with the federal program. The Department is not aware of any proposals pending to alter the federal cherry marketing program.

**7. Anticipated economic impact**

DATCP expects the proposed rule to have no economic impact statewide and locally.

**Contact Person:** Noel Favia, Marketing order Program Coordinator; Phone (608) 224-5140



Ben Brancel

Secretary

Department of Agriculture, Trade and Consumer Protection

3-20-14 Date Submitted